

MEL:JRS
F.#2019R00382

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE USE OF A
CELL-SITE SIMULATOR TO LOCATE
THE CELLULAR DEVICE ASSIGNED
CALL NUMBER 201-283-7734, WITH
INTERNATIONAL MOBILE
SUBSCRIBER IDENTITY NUMBER
354255097677993

Case No. 19-MC-1314

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, Christian F. Sabatino, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant under Federal Rule of Criminal Procedure 41 to authorize law enforcement to employ an electronic investigative technique, which is described in Attachment B, to determine the location of the cellular device assigned call number 201-283-7734, with International Mobile Subscriber Identity Number 354255097677993 (the “Target Cellular Device”), which is described in Attachment A.

2. I am a Deportation Officer with the United States Department of Homeland Security, Immigrations and Customs Enforcement (“ICE”) and have been since 2006. I am a “federal law enforcement officer” within the meaning of the Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request a search warrant. In that capacity, I

have had extensive experience and training in using cellphone location information to track fugitive aliens.

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

4. One purpose of applying for this warrant is to determine with precision the Target Cellular Device's location. However, there is reason to believe the Target Cellular Device is currently located somewhere within this district because cell-site data obtained for the Target Cellular Device indicates that it is normally found in Brooklyn, New York. Pursuant to Rule 41(b)(2), law enforcement may locate the Target Cellular Device outside the district provided the device is within the district when the warrant is issued.

5. Based on the facts set forth in this affidavit, there is probable cause to believe that PALACIOS TELLEZ has illegally reentered the United States after having been removed subsequent to a conviction for a felony, in violation of 8 U.S.C. §§ 1326(a) and (b)(1). On March 19, 2019, a grand jury returned an indictment charging PALACIOS TELLEZ with this crime. That same day, an arrest warrant was issued by the Honorable Cheryl L. Pollak, United States Magistrate Judge. There is probable cause to believe that the information described in Attachment B will assist law enforcement in arresting PALACIOS

TELLEZ, who is a “person to be arrested” within the meaning of Federal Rule of Criminal Procedure 41(c)(4).¹

6. Because collecting the information authorized by this warrant may fall within the statutory definitions of a “pen register” or a “trap and trace device,” *see* 18 U.S.C. § 3127(3) & (4), this warrant is designed to comply with the Pen Register Statute as well as Rule 41. *See* 18 U.S.C. §§ 3121-3127. This warrant therefore includes all the information required to be included in a pen register order. *See* 18 U.S.C. § 3123(b)(1).

PROBABLE CAUSE

7. I am a Deportation Officer with ICE and have been involved in the investigation of numerous cases involving the illegal reentry of aliens. I am familiar with the facts and circumstances set forth below from my participation in the investigation, my review of the ICE investigative file (including the defendant’s criminal history record) and from reports of other law enforcement officers involved in the investigation.

8. VALENTE PALACIOS TELLEZ, also known as “Valentine Palacios,” is a citizen and national of Mexico. On or about April 9, 2013, PALACIOS TELLEZ was convicted of Assault in the Second Degree, in violation of New York Penal Law § 120.05(1), a felony. On or about April 22, 2013, PALACIOS TELLEZ was sentenced to two years’

¹ Through my training and experience, I have become aware of judicial decisions holding that courts may issue search warrants to allow for the collection of location data where there is probable cause to believe that such data “will aid in the apprehension of a defendant.” In re Smartphone Geolocation Data Application, 977 F. Supp. 2d 129, 137 (E.D.N.Y. 2013).

imprisonment. On or about August 15, 2014, PALACIOS TELLEZ was removed from the United States to Mexico. On or about February 3, 2019, PALACIOS TELLEZ was arrested in Brooklyn, New York, for Assault in the Third Degree, in violation of New York Penal Law § 120.00.

9. On March 19, 2019, PALACIOS TELLEZ was charged in a sealed indictment in the Eastern District of New York with illegal reentry after having been removed subsequent to a conviction for a felony, in violation of 8 U.S.C. §§ 1326(a) and (b)(1). That same day, the Honorable Cheryl L. Pollak issued a warrant for PALACIOS TELLEZ's arrest.

10. According to the arrest report filed in connection with PALACIOS TELLEZ's February 3, 2019 arrest, PALCIOUS TELLEZ resides at 700 Avenue C, Brooklyn, New York. The report filed in connection with PALACIOS TELLEZ's February 3, 2019 arrest further states that PALACIOS TELLEZ was in possession of the Target Cellular Device at the time of his arrest.

11. On or about April 2, 2019, law enforcement agents attempted to locate PALACIOS TELLEZ at 700 Avenue C, Brooklyn, New York, but he was not there. Residents of 700 Avenue C denied knowing PALACIOS TELLEZ, and law enforcement agents found no evidence that PALACIOS TELLEZ resided at that address.

12. On or about April 10, 2019 and April 17, 2019, law enforcement agents again surveilled 700 Avenue C but did not locate PALACIOS TELLEZ.

13. On or about April 24, 2019, law enforcement agents spoke to a resident of 700 Avenue C who stated that PALACIOS TELLEZ had lived at that location but had moved out approximately one month earlier.

14. On or about May 1, 2019, the Honorable Steven M. Gold issued a search warrant for the collection of historical and prospective cell-site data for the Target Cellular Device. According to the returns from that warrant, the Target Cellular Device is consistently being used in Brooklyn, New York, primarily near the corner of Glenmore Avenue and Schenk Avenue. Based on a review of this area on Google Maps, it is a residential area with an apartment building, several homes and several empty lots. Based on the data available, it is not possible to determine any specific addresses for PALACIOS TELLEZ in this area.

15. As explained below, based on my training and experience, I believe that the data sought herein may allow law enforcement agents to obtain a more precise location of PALACIOS TELLEZ in order to effectuate his arrest.

MANNER OF EXECUTION

16. In my training and experience, I have learned that cellular phones and other cellular devices communicate wirelessly across a network of cellular infrastructure, including towers that route and connect individual communications. When sending or receiving a communication, a cellular device broadcasts certain signals to the cellular tower that is routing its communication. These signals include a cellular device's unique identifiers.

17. To facilitate execution of this warrant, law enforcement will use an investigative device or devices capable of broadcasting signals that will be received by the Target Cellular Device and receiving signals from nearby cellular devices, including the Target Cellular Device. Such a device will function in some respects like a cellular tower, except that it will not be connected to the cellular network and cannot be used by a cell phone to communicate with others. The device will send a signal to the Target Cellular Device and nearby cellular devices and thereby prompt them to send signals that include the unique identifier of the device. Law enforcement will monitor the signals broadcast by the Target Cellular Device for non-content signal information and use that information to determine the Target Cellular Device's location, even if it is located inside a house, apartment, or other building. The device will not intercept the contents of the Target Cellular Device's communications, such as telephone calls, text messages, and other electronic communications. Further, the device will not collect any other data stored on the Target Cellular Device, including e-mails, text messages, contact lists, images, or Global Positioning System (GPS) data.

18. The investigative device may interrupt cellular service of phones or other cellular devices within its immediate vicinity. Any service disruption to non-target devices will be brief and temporary (i.e., generally less than three seconds in length), existing calls by non-target devices will not be affected, and all operations will attempt to limit the interference with such devices. In order to connect with the Target Cellular Device, the device may briefly exchange signals with all phones or other cellular devices in its vicinity to determine whether those devices' unique identifiers match the identifiers of the Target

Cellular Device. The device will not complete a connection with cellular devices determined not to be the Target Cellular Device, and law enforcement will limit collection of information from devices other than the Target Cellular Device. To the extent that any information from a cellular device other than the Target Cellular Device is collected by the law enforcement device, law enforcement will not review and will delete that information, and law enforcement will make no investigative use of it, other than distinguishing the Target Cellular Device from all other cellular devices.

AUTHORIZATION REQUEST

19. Based on the foregoing, I request that the Court issue the proposed search warrant, pursuant to Federal Rule of Criminal Procedure 41. The proposed warrant also will function as a pen register order under 18 U.S.C. § 3123.

20. I further request, pursuant to 18 U.S.C. § 3103a(b) and Federal Rule of Criminal Procedure 41(f)(3), that the Court authorize the officer executing the warrant to delay notice until 30 days from the end of the period of authorized surveillance. This delay is justified because there is reasonable cause to believe that providing immediate notification of the warrant may have an adverse result, as defined in 18 U.S.C. § 2705. Providing immediate notice to the subscriber or user of the Target Cellular Device would seriously jeopardize the ongoing investigation, as such a disclosure would give that person an opportunity to destroy evidence, change patterns of behavior and flee from prosecution. *See* 18 U.S.C. § 3103a(b)(1). There is reasonable necessity for the use of the technique described above, for the reasons set forth above. *See* 18 U.S.C. § 3103a(b)(2).

21. I further request that the Court authorize execution of the warrant at any time of day or night, owing to the potential need to locate the Target Cellular Device outside of daytime hours.

22. I further request that the Court order that all papers in support of this application, including the affidavit and search warrant, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation that is neither public nor known to the target of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.

23. A search warrant may not be legally necessary to compel the investigative technique described herein. Nevertheless, I hereby submit this warrant application out of an abundance of caution.²

Respectfully submitted,



Christian F. Sabatino
Deportation Officer
United States Department of Homeland
Security
Immigration and Customs Enforcement

Subscribed and sworn to before me on May 16, 2019

/s/Steven L. Tiscione

THE HONORABLE STEVEN L. TISCIONE
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

² Officers of the United States Marshals Service have assisted with the investigation of this matter, are expected to assist with execution of the requested warrant, and are expected to assist with the arrest of Valente Palacios Tellez.

ATTACHMENT A

This warrant authorizes the use of the electronic investigative technique described in Attachment B to identify the location of the cellular device assigned phone number 201-283-7734, with International Mobile Subscriber Identity Number 354255097677993, whose wireless provider is Sprint Corporation, and whose listed subscriber is Valente Palacios.

ATTACHMENT B

Pursuant to an investigation of VALENTE PALACIOS TELLEZ, also known as “Valentine Palacios,” for a violation of 8 U.S.C. §§ 1326(a) and (b)(1), this Warrant authorizes the officers to whom it is directed to determine the location of the cellular device identified in Attachment A by collecting and examining:

1. radio signals emitted by the target cellular device for the purpose of communicating with cellular infrastructure, including towers that route and connect individual communications; and
2. radio signals emitted by the target cellular device in response to radio signals sent to the cellular device by the officers;

for a period of thirty days, during all times of day and night. This warrant does not authorize the interception of any telephone calls, text messages, other electronic communications, and this warrant prohibits the seizure of any tangible property. The Court finds reasonable necessity for the use of the technique authorized above. See 18 U.S.C. § 3103a(b)(2).